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No. 120.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

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CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES Commissioner of Immigration at the Port of Boston. } No. 120.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is an appeal from a decree of the Circuit Court of the United States for the First Circuit denying the petition of appellant for a writ of habeas corpus to secure the release of his daughter Mariam, then as now lawfully in the custody of the immigration officials at Boston, having been denied admission to this country on the ground that she is an alien afflicted with trachoma, a dangerous contagious disease.

The agreed facts as shown by the record (p. 4) are as follows:

> The petitioner, Charles Zartarian, formerly a subject of the Sultan of Turkey,

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became a naturalized citizen of the United States on September 12, 1896, at the Circuit Court of Cook County, in the State of Illinois. That his daughter Mariam, on whose behalf the petition is brought, is a girl between fifteen and sixteen years of age, and was born just prior to the petitioner's leaving Turkey. That in the latter part of the year 1904 the Turkish Government at the request of the United States minister at Constantinople, granted permission to the petitioner's wife, minor son, and his said daughter Mariam, to emigrate to the United States, it being stipulated in the passport issued to them that they could never return to Turkey. That on March 22, 1905, the Hon. G. V. L. Meyer, then United States ambassador at Rome, Italy, issued a United States passport to your petitioner's said wife and daughter. That said Mariam arrived at Boston from Naples, Italy, on April 18, 1905, and that on April 18, 1905, she was found to have trachoma, and was debarred from landing by a board of special inquiry appointed by the United States Commissioner of Immigration for the port of Boston.

ARGUMENT.

The first three assignments of error (R., 5) are past without discussion, as they appear trivial and unimportant. The fourth allegation of error appears determinative of the whole case, and charges that "the court erred in refusing to rule that said

Mariam Zartarian was to be considered a citizen of the United States in accordance with section 2172, Revised Statutes of the United States."

Thus it will be noticed that if the section mentioned, as contended by counsel for appellant, confers citizenship upon the said Mariam Zartarian, then the immigration laws can not be invoked against her admission to this country. On the other hand, however, if section 2172 does not so operate, then the immigration laws are applicable, and the fifth assignment of error charging that she is deprived of her liberty "without due process of law," is necessarily eliminated.

Section 2172 reads as follows:

> The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on the subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary war, shall be

> admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

In the case of *United States* v. *Wong Kim Ark* (169 U. S., 649–702) this court emphatically declared that—

> A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts.

Confronted by this concise statement of the manner in which persons born out of the jurisdiction of the United States may become citizens, appellant, by his counsel, has singled out section 2172, asserting in effect that under its provisions the naturalization of the father operated *eo instanti* to confer citizenship upon his minor child then residing in Turkey, and at all times since.

It requires no careful analysis of section 2172 to disclose that its purpose is to confer citizenship upon two classes of children only, viz, (1) upon the minor children of naturalized parents, if such children be dwelling in this country; and (2) upon

the children born to citizens while such citizens are sojourning abroad.

This section was before the Circuit Court in the case of *United States* v. *Kellar* (13 Fed., 82–84), and Mr. Justice Harlan had this to say concerning its scope:

> It is quite certain that the reproduction in section 2172 of the revision of the statutes of the principle embodied in the act of 1802 was for the purpose of declaring as the established policy of the Government that the children of persons who have been duly naturalized under any law of the United States, *being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States*, be considered as citizens thereof.

In the case of *Behrensmeyer* v. *Kreitz* (135 Ill., 591–629), the court said, in referring to section 2172:

> * * * in other words, in order that the naturalization of the parent should be effective to invest his child with citizenship, two conditions must exist at the time of such naturalization—the child must be under twenty-one years of age, and must also dwell in the United States.

To the same effect are:

> *O'Connor* v. *State*, 9 Fla., 215–234;
> *State* v. *Penney*, 10 Ark., 621–630;
> *Gumm* v. *Hubbard*, 97 Mo., 311–320.

The construction thus placed upon the statute was adhered to in the case of *Abdoo* v. *Williams* (132 Fed., 894–895), the facts in which are similar to those in the case under consideration.

The court, in dismissing the writ, said:

> The naturalization of the father did not change the status of the children. They were born out of the limits and jurisdiction of the United States, their father at the time of their respective births not being a citizen thereof. * * * Therefore these children were not "dwelling in the United States" when their father was naturalized, and his act did not require the authorities to consider them as citizens. Being aliens and indisputably immigrants, the provisions of the exclusion acts apply.

In conclusion, it is submitted that the appellant's child, Mariam, altho under the age of 21 years at the time of the naturalization of the father, was not then and is not now dwelling in the United States. Her status, therefore, is that of an alien.

The Government respectfully asks that the decree of the Circuit Court be affirmed.

ALFORD W. COOLEY,
Assistant-Attorney General.

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